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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,516	10/10/2006	Bodo W. Lambertz	DD-25009	5094
2387	7590	07/16/2009	EXAMINER	
Olson & Cepuritis, LTD. 20 NORTH WACKER DRIVE 36TH FLOOR CHICAGO, IL 60606			HOEY, ALISSA L	
			ART UNIT	PAPER NUMBER
			3765	
			MAIL DATE	DELIVERY MODE
			07/16/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/534,516	<b>Applicant(s)</b> LAMBERTZ, BODO W.
	<b>Examiner</b> Alissa L. Hoey	<b>Art Unit</b> 3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 May 2009.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1.3-5.7, 8, 10, 12, 14-19 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1, 3, 4, 5, 7, 8, 10, 12, 14-19 and 21 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. This is in response to amendment received on 05/27/09. Claims 1 and 21 have been amended, claims 2, 6, 9, 11, 13, 16 and 20 have been cancelled. Claims 1, 3, 4, 5, 7, 8, 10, 12, 14-19 and 21 are examined below.

***Claim Objections***

2. Claims 3, 4, 14, 15 and 17 are objected to because of the following informalities: they are dependent upon cancelled claim 2. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3-5, 8, 12, 15, 19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Litman (US 3,003,154).

Litman teaches the following:

1. (Currently Amended)

A sock, particularly for use in sporting activities, which has a cuff portion and a heel portion, a cushion padding in the area of the Achilles tendon (see figures 1 and 2), an inner surface facing the wearer's foot and an outer surface exposed to the environment (figures 1 and 2), characterized in that, the cushion padding

(10, 11, 12) is formed from at least two spacer cushion pads, which are positioned on both sides of and along the Achilles tendon (figures 1 and 2, identifiers 10, 11, 12), and a transition piece extending between the spacer cushion pads (space between pads see figures 1 and 2), and the spacer cushion pads are constructed and arranged to stand out distinctly relative to the transition piece, both the spacer cushion pads and the transition piece extending outwardly from the outer surface of the sock, the spacer cushion pads being constructed and arranged in the anatomical shape of the foot in the area of the Achilles tendon and tapering from the area of the heel portion to the cuff portion (see figures 1 and 2).

3. ( Previously Presented) A sock in accordance with claim 2, characterized in that, the transition piece is designed in the form of a cushion pad which has a smaller thickness than the spacer cushion pads (see figure 2).

4. (Previously Presented) A sock in accordance with claim 2, characterized in that, the transition piece is produced from climate-regulating fabric (column 1, lines 37-47 through column 2, lines 1-5).

5. (Previously Presented) A sock in accordance with claim 3, characterized in that, the transition piece is produced from climate-regulating fabric (column 1, lines 37-47 through column 2, lines 1-5).

8. (Previously Presented) A sock in accordance with claim 1, characterized in that, the sock has additional cushion pads (figures 1 and 2, identifiers 9, 10, 11, 12).

12. (Previously Presented) A sock in accordance with claim 3, characterized in that, the spacer cushion pads are adjusted to the anatomical shape of the foot in the

area of the Achilles tendon (see figures 1 and 2).

15. (Previously Presented) A sock in accordance with claim 2, characterized in that, the sock has additional cushion pads (figures 1 and 2, identifiers 9, 10, 11, 12).

19. (Previously Presented) A sock in accordance with claim 3, characterized in that, the sock has additional cushion pads (figures 1 and 2, identifiers 9, 10, 11, 12).

21. (New) A sock, particularly for use in sporting activities, which has a cuff portion and a heel portion, a cushion padding in the area of the Achilles tendon, an inner surface facing the wearer's foot and an outer surface exposed to the environment (Figures 1 and 2), characterized in that, the cushion padding is formed from at least two spacer cushion pads (9, 10, 11, 12), which are positioned on both sides of and along the Achilles tendon (10, 11, 12), and a transition piece extending between the spacer cushion pads (see material between the pads), and the spacer cushion pads are constructed and arranged to stand out distinctly relative to the transition piece (see figure 2), both the spacer cushion pads and the transition piece extending outwardly from the outer surface of the sock (see figure 2), the spacer cushion pads being constructed and arranged in the anatomical shape of the foot in the area of the Achilles tendon and tapering from the area of the heel portion toward the cuff portion (see figures 1 and 2), said transition/piece being a cushion pad having a smaller thickness than the spacer cushion pads, and said transition piece being made from climate regulating fabric (column 1, lines 37-47 through column 2, lines 1-5).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 7, 10, 14, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Litman in view of Lambertz (US 6,286,151).

Litman teaches a sock with pads as described above in claim 1. However, Litman fails to teach the spacer cushion pad consist of internally hollow fibers and the sock having an air channel.

Regarding claims 7 and 14, Litman discloses pads 10, 11, 12 comprise a sponge rubber material surrounded by cotton, but fails to explicitly disclose said pads comprising internally hollow fibers. Lambertz discloses a sock with padding consisting of hollow-core fibers coated with threads. Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to construct the pads of Litman out of a plastic material having internally hollow fibers, because hollow-core plastic threads are particularly effective in damping shocks and pressure (column 3, lines 18-22).

In regard to claims 10, 17 and 18 Litman additionally fails to disclose said sports sock having an air channel. Lambertz teaches said heat-regulating sock for use during sport activities comprising at least 1 integrated airway 3 extending from the sole 2 to the top of the sock, wherein the airway 3 consists if climate-regulating netted fabric (Abstract). Thus, it would have been obvious to one having ordinary skill in the art at the

time of the invention to provide the sports sock of Litman with climate-regulating netted fabric forming an air channel in said sock, as taught by Lambertz, because through said air channel, moisture is drawn upward from the area of the sole of the foot, thus cooling the foot and keeping the foot dry (column 2, lines 30-31).

***Response to Arguments***

7. Applicant's arguments filed 05/27/09 have been fully considered but they are not persuasive.

The term "extending" replacing "is inserted" does not overcome the Litman patent.

The extent to which the transition piece extends between the spacer pads is what is needed to overcome the Litman patent. Stating that "...a transition piece extending from one spacer cushion pad to the other spacer cushion pad...", or something similar would overcome the Litman patent.

The Examiner notes that amending the claim language as state above to overcome the Litman patent, would not create a patentable claim over other cited prior art references in an obviousness 103 rejection. The references to Segesser (DE 10305277) and Bertheas (DE 2 607 383) with an obviousness rejection using reversal of essential working parts, would read on the independent claims.

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alissa L. Hoey/  
Primary Examiner, Art Unit 3765